

THE PHILIPPINO EXPRESS

October 11, 1999



LEGAL NOTES

Ruben S. Seguritan

Work Authorization

A pending adjustment of status application (I-485) does not automatically give an alien permission to work, according to a recent INS policy. Unless he is in a nonimmigrant status which automatically grants him permission, he must apply for an employment authorization document (EAD).

Failure to obtain an EAD would render him ineligible to adjust under Section 245(a), unless he is the immediate relative of a U.S. citizen. And if he can't adjust, he may be required to leave the U.S. and apply for an immigrant visa at a U.S. Consulate abroad.

All applicants for adjustment of status are eligible to file for employment authorization. The application is filed on Form I-765 with a filing fee of \$100. It must be submitted to the Service Center or local INS office where the I-485 application was filed. Two photographs and the I-485 filing receipt must be submitted with the application.

Once issued, the EAD allows the

alien to work for any employer. It is valid for one year but it can be renewed while his adjustment application is pending. Because of processing delays, renewal applications should be filed at least 90 days before their expiration to avoid a lapse in the employment authorization. If the alien does not receive his EAD renewal on time, he should stop working during the lapse.

There are instances when aliens are considered not to be engaged in unauthorized employment while their adjustment applications are pending. Professional workers (H-1B), intracompany transfers (L-1), and treaty traders and investors (E) are automatically granted permission to work for their petitioning employers. So that as long as they

don't transfer to another employer or violate the terms of their nonimmigrant status, their adjustment applications are not jeopardized even without obtaining an EAD.

Applying for an EAD document is advisable, however, for the aforementioned nonimmigrants. Their status may expire or may reach the duration limit. They may also want to work in the open market. An EAD under these circumstances would avoid the Section 245(a) bar resulting from unauthorized employment pending their adjustment application.

Editor's note: Mr. Seguritan has been in the general practice of law in the U.S. for over 24 years. His office is located at 11 Pennsylvania Plaza, Suite 2101, New York, NY 10001, tel. no. (212) 695-5281. Questions regarding this article may be addressed directly to him.